STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRAD ALEX JORDAN,

Defendant-Appellant.

UNPUBLISHED
May 14, 1999

No. 210892
Berrien Circuit Court
LC No. 97-401530 FC

Before: McDonald, P.J., and Sawyer and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of murder in the second degree, MCL 750.317; MSA 28.549, and two corresponding counts of possession of a firearm in the commission of a felony, MCL 750.227(b); MSA 28.424(2). Defendant was sentenced to two concurrent terms of life in prison for his second-degree murder convictions and two years in prison for each felony-firearm conviction, to run consecutively with his life sentences. The sentencing court gave defendant 224 days of credit against his life sentences for time served. Defendant appeals his conviction as of right. We affirm. However, we remand for clerical correction of the judgment of sentence.

This case arises out of two murders which were committed in Benton Harbor in February 1997. One victim was found dead by police on the street. Defendant approached a Benton Harbor police officer as he was cordoning off the crime scene and led the officer to another body on the floor of the house in which defendant resided. Defendant identified the bodies as his two roommates, Santino and Kinley Poole.

At approximately 7:30 a.m., defendant accompanied police officers to the police station, where he was seated in an office in the detective bureau. At approximately 9:15 a.m., detectives conducted a witness interview with defendant, and at approximately 11:00 a.m., defendant gave an exculpatory statement and allowed officers to take several articles of his clothing for analysis after the officers purportedly observed blood on his coat, shoes, and socks. The officers proceeded to conduct a follow-up investigation. Defendant remained alone in the office, wearing long underwear and a tee shirt, until approximately 3:20 p.m., when he was given the warnings required by *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). He acknowledged that he had received those

warnings, declined to speak to an attorney, and agreed to answer questions, making three more statements to the police. His final statement, which was reduced to writing at about 7:15 p.m., was inculpatory and was contrary to the statement given to the officers in the morning. At trial, after the prosecution began to delve into the statements, the court conducted a hearing pursuant to *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965). At the conclusion of this hearing, the trial court ruled that all of defendant's statements to the police were voluntary and properly admissible.

On appeal, defendant argues that the trial court erred in finding that his incriminating statements to police were made voluntarily and that they were, therefore, admissible evidence. When reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination. *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997). However, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings will not be reversed unless they are clearly erroneous. *Id.* A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Although the trial court found that defendant was not in custody when he gave his initial exculpatory statement to police, it found that once the police had taken his clothing, he was in custody because a reasonable person in his situation could believe that he was not free to leave. See *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998). We find no error in this regard. It is uncontroverted that before any further questioning of defendant occurred, he was given his *Miranda* warnings.[1]

In *People v Cipriano*, 431 Mich 315; 429 NW2d 781 (1988), our Supreme Court stated that the test to be applied in evaluating the voluntariness of a statement made to police while in their custody is whether "considering the totality of all the surrounding circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker,' or whether the accused's 'will has been overborne and his capacity for self-determination critically impaired. . . .'" *Id.* at 333-334 (citations omitted). The factors to be considered in making a voluntariness determination include:

> the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in brining him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. *Id.* at 334. [Citations omitted.]

The record shows that defendant was twenty years old, that he could read and write, and that he had graduated from high school and taken some college courses. He had previous experience with law enforcement. There was no evidence, nor did defendant assert, that he was injured, intoxicated or drugged, in ill health, deprived of medical attention, or physically abused or threatened with abuse during

the time he was detained and questioned. Testimony established that defendant was in unlocked room, that he was allowed to use the bathroom whenever he chose, which defendant acknowledged was over six or seven times, that he was given a candy bar and a drink, and that he was given a blanket and some socks after he complained of being cold. Although defendant testified that he asked to use a telephone, the officers testified that he did not. Defendant testified that if he had been allowed the use of a telephone, he would have called his mother "down south." However, he acknowledged that he knew that his father was at the police station, and that he made no attempt to contact him. Furthermore, defendant testified that he did not ask to leave.

Finally, at trial, defendant claimed that all of his statements to the police were a lie and that he had never indicated to them that he had actually been in the house with the victims when they were shot by defendant's brother, Donte Jordan. In *Peerenboom*, *supra* at 199, after applying the *Cipriano* factors, this Court discussed the significance of an admission by a defendant that an allegedly involuntary statement was a lie:

> Also, defendant admitted that she lied to the officers in order to protect her son by telling them that she personally placed the bomb. That she had the presence of mind to lie weighs strongly in favor of finding that her statements were the product of her own free and unconstrained will, as opposed to having resulted from an impairment of her self-determination.

Similar circumstances exist in this case. If, in fact, defendant had the presence of mind to make statements to the officers in which he intentionally told several versions of what he now claims was a false statement created in an attempt to protect his brother, that fact severely undercuts his argument that his making of those statements was involuntary. *Id.*

After reviewing the entire record and considering the totality of the circumstances, we find that the trial court did not err in determining that defendant's statements were voluntary. However, we note that the sentencing court erred in applying defendant's 224 days credit for time served to the life sentences. MCL 750.227b(2); MSA 28.424(2)(2) provides that a term of imprisonment on a felony-firearm conviction is to be served prior to and consecutively with any sentence imposed for the conviction of the underlying felony. *People v Bonham*, 182 Mich App 130, 137; 451 NW2d 530 (1989). Credit for time served is applied against the sentence running first in time. *People v Cantu*, 117 Mich App 399, 403; 323 NW2d 719 (1982).

Affirmed. We remand for clerical correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Jeffrey G. Collins

[1] Defendant points out that the trial court referred to his circumstances from the time his clothes were taken to the time he was given his *Miranda* warnings as an "unlawful detention." However, it is clear from the context of the court's remarks that it was not ruling that the police did not have probable cause to arrest defendant, nor that he had been unlawfully seized. Rather, the court simply found that at the point that officers took defendant's clothing, he was in custody. To the extent that defendant points to the court's misstatement to advance an alternative theory of exclusion, we deem such argument abandoned as insufficiently briefed. See *People v Dilling*, 222 Mich App 44, 51; 564 NW2d 56 (1997).